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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-541-2021 (O&M)

Date of decision : 22.07.2021

State of Punjab and another

...Appellants

Versus

Shivdev Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Pankaj Gupta, Addl. A.G. Punjab.
for the appellants-State.

(Through Video Conferencing)

AJAY TEWARI, J. (ORAL)

1. This appeal has been filed against the judgment of learned Single Judge allowing the writ petition filed by seven persons who had been recommended for the appointment as members of various District Consumer Disputes Fora (now Commissions) by the Selection Committee constituted under the provisions of the Consumer Protection Act, 1986 (hereinafter to be referred as “the Act of 1986”).

2. The case of the petitioners/present respondent Nos.1 to 7 was that the Committee had recommended their names as far back on 23.12.2019, but for a period of seven months the Appellant No.1-State did not notify their appointments in spite of the fact that many steps had been taken to effectuate those recommendations and the only step which remained to be done was with respect to verification of antecedents of the

recommended candidates and thereafter their appointment letters were to be issued. It was further the case of the Petitioners (present Respondent Nos.1 to 7) that similar recommendations for the posts of Presidents in the District Consumer Fora had also been made on 23.12.2019, but those appointments were given effect to on 13.07.2020. During the pendency of the writ petition, the Appellant No.1-State scrapped the recommendations, vide order dated 01.12.2020, which was placed on record as Annexure A-1 and the legality of the same was also considered by the learned Single Judge. After considering the entire issue, Learned Single Judge allowed the writ petition, quashed the order dated 01.12.2020 (Annexure A-1) and issued direction to the Appellant No.1-State to notify the appointment of the Petitioners (present respondent Nos.1 to 7) within a period of two months from the date of receipt of certified copy of the order. However, it was kept open to the State to ensure the compliance of the provisions of Sub-Clause 10 to 12 of Rule 5 of the Punjab Consumer Protection (Appointment, Salary, Allowances and Condition of Service of President and Members of the State Commission and District Forum) Rules 2018 (hereinafter referred to as the “2018 Rules”), regarding the verifications of the antecedents of the recommended candidates.

3. The Learned Additional Advocate General, Punjab has argued that actually on 20.07.2020, a new Act had come into force and that is why the recommendations which were made under the old Act could not be given effect to and in the letter dated 21/22.09.2020

(Annexure R-1) received from Under Secretary to the Government of India, it had been mentioned as follows:-

“2. The vacancies of President and Member in the State Commission and District Commission will henceforth be filled of as per the provisions contained in the said rules. It is also clarified that since the Consumer Protection Act, 1986 has been repealed by the Consumer Protection Act, 2019 and new Rules have come into force, appointment of President and Member, where the selection process has commenced as per old provision and is not yet complete, will also be made under the provisions of the new Rules.”

4. Apart from this factual aspect, the legal argument which is sought to be raised is that the eligibility for the post of members has changed between the passing of both the Acts.

5. We find that learned Single Judge has considered both these arguments and rejected the same with reasons, with which we fully concur. It has been observed by the learned Single Judge that as per advertisement dated 15.12.2018 (Annexure P-2), there was a specific reference that the appointment to the post in question shall be made in accordance with the Act of 1986 and as per the procedure prescribed in the 2018 Rules. Reliance has been placed by the learned Single Judge on the judgment of the Supreme Court in the case of **Devin Katti and another Vs. Karnataka Public Service Commission and Others,** reported as **1990(3) SCC 157**, in which it has been specifically held that where the advertisement expressly states that the selection shall be made in accordance with the existing Rules or Government order, then the

selection must be made in accordance with the Rules which are existing at the time of the advertisement. It was further held in the said judgment that if the recruitment Rules are subsequently amended, then also the amended Rules would not apply, unless the amended Rules are retrospective in nature. In the present case, it was neither the argument of the Appellants-State before the learned Single Judge nor before this Court that the amended Act was retrospective in nature and thus, as per the law laid down by the Supreme Court, it is the Act of 1986 and the 2018 Rules, which would govern the present selection/appointment.

6. Learned Single Judge has also considered the fact that almost the entire procedure as contemplated by Rule 5 of 2018 Rules had been completed. It has been noticed that after the advertisement, scrutiny of the applications had been done and the selection committee had shortlisted the applicants and thereafter even interview had also been conducted and the selection committee which was duly constituted, had even recommended the panel of names of the candidates for the appointment as President or Member respectively. It was observed that for all intents and purposes, the entire selection process was over and the State Government had only to verify the credentials and antecedents of the recommended candidates and had to notify the appointments. It was noticed that the recommendations to the post of Members were made on 23.12.2019, alongwith recommendations to the post of Presidents in the District Fora. Although, the Presidents of District Fora were appointed by the State Government on 13.07.2020 i.e. before coming into force of the new Act

(i.e. 30.07.2020) but the members were not appointed by the State Government for no valid reason. Reliance has also been placed by the learned Single Judge on Section 107 of the Consumer Protection Act, 2019 which deals with the aspect of Repeal and Savings. Further, reference has also been made by the learned Single Judge to the judgment of the Supreme Court in **Shankarson Dass Vs. Union of India, 1991(3) SCC 47**, in which it has been held that although successful candidates do not acquire an indefeasible right to be appointed but that would not mean that the State has a licence of acting in an arbitrary manner. Decision not to fill up the vacancy has to be taken for appropriate and bona fide reasons. It has been found by the learned Single Judge that the non-appointment of the members of the District Forum was not for any valid reason.

7. As noticed above, we fully concur with the observations/findings of the learned Single Judge and reject the arguments of the learned Additional Advocate General, Punjab. We further reiterate that in the advertisement in question, it was specifically mentioned that the selection would be carried out by the Selection Committee, as constituted under the 1986 Act, after following the procedure prescribed in the 2018 Rules. Admittedly, the said procedure has been followed and it stands completed for all intents and purposes and it is only the formal order of appointment and the verification of the antecedents which was left. It is not the case of the Appellant-State that the new Act of 2019 was retrospective in nature and thus, the judgment of

Supreme Court in Devin Katti and Others (supra), relied upon by the learned Single Judge fully applies to the present case and, therefore, the coming into force of the new Act on 30.07.2020 or the letter dated 22.09.2019 (Annexure R-1), would not result in stalling the process of appointment of the members, moreso, when the Presidents of the Consumer Fora who were also recommended on the same date as the Members, have already been appointed by the State Government on 13.07.2020 i.e. prior to coming into force of the new Act. It is also relevant to note that no person/individual has challenged the selection and it is only the appellant-State who have delayed the entire process, in spite of the fact, as noticed by the learned Single Judge, out of 40 posts of members of the District Fora, 24 were lying vacant and about 10000 cases were pending before various District Fora, thus, causing great inconvenience to the public. It is also a matter of common knowledge (though not determinative) that even as on date, various Tribunals and Adjudicating Fora across the country are lying headless and various High Courts as well as the Supreme Court have been flooded with petitions which have to be dealt with in the absence of statutory redressal authorities. Of course, sometimes, there may be genuine difficulties in filling up the posts but in the present case, advertisement was issued on 15.12.2018 and 9 out of 10 consequential steps had also been completed, when the State Government scrapped the recommendation.

8. This Court cannot be oblivious of the fact that because of this obdurate attitude of the appellants, a further period of one year has

elapsed after the appointment of Presidents and the situation which is now prevalent is that even where the appointments have been made, various Fora are dys-functional for want of members. The appellants are paying handsome salary to the Presidents for doing no work. We wonder if it is a case of cutting one's nose to spite one's face.

9. In the circumstances, we see no reason to take a different view than that of the Single Judge.

10. Accordingly, the Letters Patent Appeal is dismissed.

11. Since the main case has been decided, the pending Civil Miscellaneous Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIKAS BAHL)
JUDGE

22.07.2021

Pawan

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No